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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,182	01/25/2002	Timothy Alan Scavone	8854	5287

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EXAMINER

WANG, SHENGJUN

ART UNIT PAPER NUMBER

1617

DATE MAILED: 11/19/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/057,182

Applicant(s)

SCAVONE ET AL.

Examiner

Shengjun Wang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 24-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. Claim 24-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Applicant timely traversed the restriction (election) requirement in Paper No. 7.

2. Applicant's election with traverse of invention group I, claims 1-23 in Paper No. 7 is acknowledged. The traversal is on the ground(s) that the invention of group II, explicitly claim the use of composition claimed in invention group I, therefore can not be used with other product; and search of all the invention is not seen as an undue burden since both invention are in the same class and subclass. This is not found persuasive because applicants interpretation of "method" is improper. Invention group II is directed to an antiperspirant method, which employ the product claimed in invention I, as stated in the prior office action, an antiperspirant method may be carried out by employing other product, therefore, the restriction is proper. As to the search burden, not the search is not limited to patent literature.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections 35 U.S.C. § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldberg et al. (US 5,176,903, IDS), in further view of Berndt (US 5,626,856, IDS) and Putman et al. (US 5,902,571)

5. Goldberg et al. teaches an antiperspirant containing composition comprising 12-30% of “wax”; 10-80% of silicone; 10-30% of antiperspirant salt, wherein the “wax” may be a mixture of various “waxes” including hydrogenated castor oil, and petrolatum (the WAX disclosed by Goldberg would meet the limitation of suspending agents herein, see pages 6-7 in the specification); the silicone may be cyclodimethicone, dimethicone, polydimethylsiloxane, or mixture thereof; the antiperspirants may include aluminum salt, zirconium salt. See, particularly, column 4, lines 35-68. Other ingredients may be incorporated in the composition are silica, PEG distearate. See, particularly, the examples and the claims.

6. Goldberg et al. does not teach expressly the particularly amount of petrolatum herein, or the particular amounts of other ingredients.

7. However, Goldberg et al. discloses generally the usefulness of mixture of the wax material, which would encompass all range of mixing, including the range herein claimed (0.05-0.95% of petrolatum to 0.1 to 30% of suspending agents. Therefore the range herein claimed overlap with the range disclosed by Goldberg.

Therefore, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to make a antiperspirant containing composition with the particularly amounts of each and every ingredients herein (particularly, the mixture of hydrogenated castor oil and petrolatum).

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A person of ordinary skill in the art would have been motivated to make an antiperspirant containing composition with the particular amounts of each and every ingredients herein because it is well-settled that In the case where the claimed ranges “overlap or lie inside ranges disclosed by the prior art” a prima facie case of obviousness exists. In *re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); In *re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990) (The prior art taught carbon monoxide concentrations of “about 1-5%” while the claim was limited to “more than 5%.” The court held that “about 1-5%” allowed for concentrations slightly above 5% thus the ranges overlapped.); In *re Geisler*, 116 F.3d 1465, 1469-71, 43 USPQ2d 1362, 1365-66 (Fed. Cir. 1997). As to the employment of C18-C36 triglycerides, note C18-C36 triglycerides are particularly known to be useful in cream formulation of antiperspirant composition. See, particularly, the abstract, column 6, lines 15-39, and the claims in Putman. The employment of white petrolatum is seen to be a selection from amongst equally suitable material and as such obvious. Ex parte Winters 11 USPQ 2nd 1387 (at 1388) since white petrolatum is known to be useful in antiperspirant composition. See, particularly, the examples in Berndt. Furthermore, the optimization of a result effective parameter, e.g., the amounts of each known ingredients in a cosmetic composition, is considered within the skill of the artisan. See, In re Boesch and Slaney (CCPA) 204 USPQ 215.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang, Ph.D. whose telephone number is (703) 308-4554. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Patent Examiner


Shengjun Wang

November 13, 2003